IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

WP(C).No. 24215 of 2007(G)

PETITIONER:

SHRIRAM TRANSPORT FINANCE COMPANY LTD.,
(FORMERLY KNOWN AS SHRIRAM INVESTMENTS LTD)HAVING ADMINISTRATIVE OFFICE AT MOOKAMBIKA COMPLEX NO.4, LADY DESHIKACHERRY ROAD,MYLAPORE,CHENNAI & BR.OFF. AT SHRIPADAM BUILDING,CHEROOTTY ROAD,KOZHIKODE, REP.BY ITS AUTHORISED SIGNATORY MR.SIBY JOHN.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.N.SASI

RESPONDENTS:

1. THE ASSISTANT LABOUR OFFICER, 3RD CIRCLE, KOZHIKODE.

2. THE DEPUTY LABOUR COMMISSIONER, KOZHIKODE.

3. GAYATHRI.V., W/O MANOJ KUMAR, PUNAPUNATHIL HOUSE, MALAPPARAMBA, KOZHIKODE.

BY G.P. SHRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

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W.P.(C).No.24215 of 2007

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Dated this the 8th day of August, 2007

J U D G M E N T

The petitioner is the management of an establishment who challenges Exts.P5 and P9 orders of the original and appellate authorities under the Maternity Benefits Act. Petitioner's contention is that the petitioner has not been afforded an opportunity of being heard before passing original orders.

2. I have considered the arguments of the counsel for the petitioner and perused the impugned orders.

3. I find that Exts.P5 and P9 orders have been passed in the second round of litigation. The first time when original order was passed against the petitioner, he took up the matter in appeal before the appellate authority, who remanded the matter to the original authority for reconsideration. It is pursuant to the same, that Ext.P5 order has been passed by the original authority. Petitioner's appeal has also been rejected by Ext.P9

order. The petitioner is challenging those orders in this writ petition on the ground that he was not heard before passing the orders. The petitioner also contends that no evidence has been adduced, which would support the case of the third respondent and therefore, the authorities were not correct in passing the impugned orders.

4. Ext.P5 is the order of the original authority. In the same it is recorded as follows:

> "As per the direction of the Deputy Labour Commissioner the Assistant Labour Officer, Kozhikode 3rd Circle give chances on 21.4.2004, 19.5.04, 2.6.04 and 7.7.04 for enquiry and examination on the above dates the complainant present on 19.5.04. The branch manager in-charge Sriram Investment Calicut Branch requested one week time for hearing by a letter. Time is allowed and he came in posted to 2.6.2004. On 2.6.2004 the appellant advocate present and asked one month time. It is also allowed and the came (sic) is posted to 7.7.2004 at 2.30 PM on 7.7.04, the complainant present, but neither the applent (sic) non this counsel present."

5. In spite of getting an appellate order in his favour for reconsideration of the matter, the petitioner was not ready to adduce evidence and argue the matter for six postings mentioned in the order. For that reason alone, the writ petition is liable to be dismissed. I also do not find any merit in the contention of the petitioner that there is no material on record to show that the third respondent was an employee of the petitioner. I find the

following observations in Ext.P5.

> "In the written statement of 2nd opposite party at the time of denying the employment of the complainant admitted that the complainant has been practicing computers and typewriting in the office of the 2nd opposite party and she is not entitled to any benefits enjoyed by the regular staff further she was practising the same only for preparing herself for good job opportunities. Opposite parties had not disputed the date of commencement of work of the complainant and receipt of notices in Form "E" sent by the complainant.. Opposite parties have no case that they have sent any reply to the notices received from the complainant rejecting the claim. The management is engaged in finance and investment business. It is strange to believe the version of 2nd opposite party that an establishment engaged in finance and investment business allows an outsider to sit in their office and allows to practice typewriting and computers using the opposite parties machinery. In the above circumstances I hold that the complainant is a 'woman' as defined in the Maternity Benefit Act and is an employee of the 2nd opposite party which is the branch office of the 1st opposite party and she is entitled for maternity benefits and Medical Bonus."

6. The petitioner admits that the third respondent was regularly attending the petitioner's establishment. It is also admitted that the petitioner's establishment is engaged in the financial investment business as observed by the original authority in Ext.P5. I am also unable to believe the version of the petitioner that the petitioner allowed the third respondent to sit in their office to practise typewriting and computers. Once it is admitted that the third respondent was in fact attending the office of the petitioner, it was for the petitioner to prove by adducing evidence that she was not an employee, but only an

apprentice. The petitioner has not chosen to adduce any evidence in this regard before the authority. In the above circumstances, I am also unable to accept the contention of the petitioner that there was no evidence on record to substantiate the claim of the 3rd respondent. Therefore, I am not inclined to entertain this writ petition and accordingly, the same is dismissed.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.